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IN THE

Supreme Court of the United States

ENGINE MANUFACTURERS ASSOCIATION AND
WESTERN STATES PETROLEUM ASSOCIATION,
Petitioners,

v.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, *et al.*,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Section 209(a) of the Clean Air Act expressly preempts any state or local "standard relating to the control of emissions from new motor vehicles." 42 U.S.C. § 7543(a). The First and Second Circuits have applied this provision to invalidate state regulations limiting the sale of new motor vehicles with specified emission characteristics. The Ninth Circuit in this case has held that a local regulation may impose such restrictions on new vehicle purchases. The question presented is:

Whether local government regulations prohibiting the purchase of new motor vehicles with specified emission characteristics—which are otherwise approved for sale by state and federal regulators—are preempted by the Clean Air Act, 42 U.S.C. § 7401 *et seq.*

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

Petitioner Engine Manufacturers Association ("EMA") was plaintiff and appellant below. Respondents South Coast Air Quality Management District, its individual Board Members (William A. Burke, Norma J. Glover, Michael D. Antonovich, Hal Bernson, Jane W. Carney, Cynthia P. Coad, Beatrice J.S. Lapisto-Kirtley, Ronald O. Loveridge, Jon D. Mikels, Leonard Paulitz, Cynthia Verdugo-Peralta, and S. Roy Wilson), and its Executive Officer (Barry R. Wallerstein) were defendants and appellees below.

Petitioner Western States Petroleum Association ("WSPA") intervened below on behalf of plaintiff EMA, and also joined in EMA's appeal to the Ninth Circuit. The Natural Resources Defense Council, Coalition for Clean Air, Communities for a Better Environment, Inc., Planning & Conservation League, and Sierra Club intervened on behalf of defendants.

Pursuant to S. Ct. Rule 29.6, petitioner EMA states that it is the not-for-profit trade association representing the interests of the world's leading manufacturers of internal combustion engines used in almost all medium-duty and heavy-duty motor vehicles, other than passenger cars. EMA members manufacture the medium-duty and heavy-duty compression-ignition, diesel-fueled engines that are installed in certain pick-up trucks and sport-utility vehicles, delivery vans, shuttle vans and cargo vehicles, trucks, tractor-trailers, waste haulers, street-sweepers and buses, and sold throughout the United States. EMA has no corporate parents, subsidiaries or affiliates, and no publicly traded company has a 10% or greater ownership interest in EMA.

Petitioner WSPA is a trade association organized as a non-profit corporation under California law. Its members consist of companies engaged in the exploration, production, transportation, refining and marketing of crude oil and petroleum products, including diesel fuel. WSPA has no corporate parents, subsidiaries or affiliates, and no publicly traded company has a 10% or greater ownership interest in WSPA.

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PETITION FOR A WRIT OF CERTIORARI

The Engine Manufacturers Association ("EMA") and the Western States Petroleum Association ("WSPA") respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the Ninth Circuit affirming the District Court's judgment is reported at 309 F.3d 550 and reprinted in the appendix hereto ("App.") at 1a. The opinion of the District Court granting judgment for defendants is reported at 158 F.Supp.2d 1107 and is reprinted at App. 3a-27a.

JURISDICTION

The judgment of the Court of Appeals was entered on October 24, 2002. A timely petition for rehearing was denied on December 11, 2002. App. 29a. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause of the United States Constitution provides in pertinent part:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. [U.S. Const., art. VI, cl. 2.]

Section 209(a) of the federal Clean Air Act, 42 U.S.C. § 7543(a), an express preemption provision, provides in pertinent part:

> No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

INTRODUCTION

This case presents the question whether a local air quality district's "Fleet Rules," which prohibit operators of a fleet of fifteen or more vehicles from purchasing new diesel-fueled vehicles, constitute "standards relating to the control of emissions," and are thus preempted under the Clean Air Act.

It is also one of the unusual cases in which all the customary criteria for certiorari are readily met.

First, the Ninth Circuit's decision conflicts with the decisions of two other federal circuit courts that have considered the same issue. S. Ct. Rule 10(a). Both the First and Second Circuits have squarely held that regulations requiring that a percentage of vehicles *sold* be zero-emission vehicles established emissions "standards" and thus were preempted by the Clean Air Act. *Association of Int'l Auto. Mfrs.* v. *Commissioner, Massachusetts Dep't of Envtl. Protection*, 208 F.2d 1, 7 (1st Cir. 2000); *American Auto. Mfrs. Ass'n* v. *Cahill*, 152 F.3d 196, 200 (2d Cir. 1998). The Ninth Circuit, on the other hand, held that the Fleet Rules did not impose emissions "standards," and thus were not preempted, because the Fleet Rules spoke in terms of "purchases," not "sales." That semantic distinction does not and cannot explain away the stark conflict that now exists between the First and Second Circuits and the Ninth Circuit.

Second, the Court of Appeals's decision flatly conflicts with the decisions of this Court. S. Ct. Rule 10(c). This Court observed over three decades ago that Congress in the Clean Air Act "largely preempted the field with regard to 'emissions from new motor vehicles.'" *Washington* v. *General Motors Corp.*, 406 U.S. 109, 114 (1972). And as this Court has recognized in other contexts, the language chosen by Congress in preempting standards "relating to the control of emissions from new motor vehicles" is deliberately broad. *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374, 383-384 (1992) ("related to" preemption is "broad" and "expansive"). Preemption under a "related to" clause typically covers all state laws having "reference to" or "connection with" the preempted subject matter. *American Airlines, Inc.* v. *Wolens*, 513 U.S. 219, 223 (1995).

This Court's precedents concerning the preemptive force of the Clean Air Act and the expansive nature of its "relating

to" language compel the conclusion that the Act's preemption provisions encompass and prohibit the Fleet Rules here at issue. The Fleet Rules refer to and adopt a subset of standards and other preconditions in an effort to control the level of emissions from new motor vehicles. Indeed, obtaining reductions from new vehicle emissions is the very purpose of the Fleet Rules. The Fleet Rules seek to do so by mandating the purchase of new vehicles meeting the District's designated subset of "standards," and by prohibiting the purchase of diesel-fueled vehicles that can be purchased throughout California and the nation as a whole. Thus, pursuant to this Court's prior decisions, the Fleet Rules clearly "relate to" the control of emissions from new motor vehicles, and so are expressly preempted under the Clean Air Act.

Third, the conflict in this case concerns a matter of overriding national importance. S. Ct. Rule 10(c). Congress included an express preemption provision in the Clean Air Act to ensure uniformity in regulating new motor vehicle emissions. But the Ninth Circuit's decision allows local governments to impose varying and conflicting emissions standards on the purchase of new vehicles, balkanizing emissions standards across the country, undermining the regulatory authority of the U.S. Environmental Protection Agency ("EPA"), and thus negating plainly stated congressional intent. The court's decision should not be allowed to stand.

STATEMENT OF THE CASE

A. The Clean Air Act.

The Clean Air Act, 42 U.S.C §§ 7401-7671, "is one of the most comprehensive pieces of legislation in our nation's history." *Motor Vehicle Mfrs. Ass'n* v. *New York State Dep't of Envtl. Conservation* ("*MVMA*"), 17 F.3d 521, 524 (2d Cir. 1994). Title I of the Clean Air Act directs the U.S. Environmental Protection Agency ("EPA") to establish national ambient air quality standards ("NAAQS") for pollutants that cause or contribute to air pollution. 42 U.S.C. § 7408(a). To achieve and maintain those NAAQS, each state is required to submit a state implementation plan ("SIP") to EPA for approval. The SIP details the emission control regulations applicable to stationary sources within its jurisdiction that the state will utilize to ensure compliance with the NAAQS.

However, in their attempts to attain the NAAQS determined by EPA, states may not promulgate standards or other pre-approval requirements "relating to the control of emissions from new motor vehicles." 42 U.S.C. § 7543. As the District Court noted in this case,

> Section 209(a) [of the Clean Air Act] expressly preempts all state regulation of motor vehicle emissions. Congress preempted the field of vehicle emissions for two reasons: "to ensure uniformity throughout the nation, and to avoid the undue burden on motor vehicle manufacturers which would result from different standards." [App. 7a (quoting *Motor Vehicle Mfrs. Ass'n.* v. *New York State Dep't of Envtl. Conservation,* 810 F. Supp. 1331, 1337 (N.D.N.Y. 1993), *aff'd in part, rev'd in part,* 17 F.3d 521 (2d Cir. 1994))].

Title II of the Clean Air Act reflects Congress's "endeavor to resolve the problems caused by moveable sources or vehicle emissions," as distinguished from stationary sources of air pollution such as factories and power plants. App. 11a.

Section 202 of the Clean Air Act, 42 U.S.C. § 7543(a), expressly authorizes EPA to promulgate emission standards for new motor vehicles sold in the United States. Further, "[u]nder Section 209 of the Clean Air Act, exclusive control over 'standards relating to the control of emissions from new motor vehicles' is vested in the federal government, and the states are preempted from regulating in the area." *Cahill*, 152 F.3d at 198.

"In contrast to federally encouraged state control over stationary sources, regulation of motor vehicle emissions had been a principally federal project." *Engine Mfrs. Ass'n* v. *EPA*, 88 F.3d 1075, 1079 (D.C. Cir. 1996). Thus, the "cornerstone of Title II is Congress' continued express preemption of state regulation of automobile emissions." *MVMA*, 17 F.3d at 526. Only the State of California, due to its unique air quality problems, received a statutory exemption from the Clean Air Act's broad federal preemption, which permitted that State and that State alone to adopt its own new motor vehicle emission regulations. 42 U.S.C. § 7543(b)(1). Even so, California may adopt and enforce its own emission standards only after applying to and receiving a preemption waiver from EPA. *Id.* § 7543(b).

Other states may promulgate regulations requiring new vehicles sold in their states to be in compliance with California's emission standards, thereby "piggy-backing" onto California's preemption exemption. However, this opt-in provision, set forth in section 177 of the Clean Air Act, 42 U.S.C. § 7507, "is carefully drafted to avoid placing 'an undue burden on the automobile manufacturing industry.' " App. 12a (quoting *MVMA*, 17 F.3d at 527). Specifically, an opt-in state must adopt standards "identical" to California's.

B. California's Regulations

Pursuant to its authority to adopt its own new motor vehicle emission regulations, California, acting through its Air Resources Board ("CARB"), has enacted two stringent

emission control programs for new motor vehicles: one for passenger cars and medium-duty vehicles, including certain diesel-fueled vehicles (the "LEV Program"), and one for heavy-duty urban transit buses (the "Urban Bus Program").

In adopting the LEV Program, "CARB established the most stringent exhaust regulations ever for light and medium duty vehicles." App. 13a. The regulations establish four tiers of exhaust emission standards for increasingly stringent categories of low-emission vehicles: (1) transitional low-emission vehicles ("TLEVs") (2) low-emission vehicles ("LEVs"); (3) ultra-low-emission vehicles ("ULEVs"); and (4) zero-emission vehicles ("ZEVs"). For each category of vehicles, a set of stringent emission standards for carbon monoxide, oxides of nitrogen and formaldehyde applies. "The LEV Program achieves emission reductions by requiring manufacturers to sell progressively cleaner mixes of vehicles over time. The average emissions from the mix of these categories of vehicles produced by a manufacturer must meet an [increasingly lower] overall 'fleet average' [emission] requirement." App. 14a.

CARB's Urban Bus Program: (i) requires reductions in particulate matter and oxides of nitrogen fleet emissions by urban transit bus operators; and (ii) establishes stringent exhaust emission standards applicable to new urban bus engines. To implement the CARB Urban Bus Program, urban transit bus fleet operators are required to choose between two different compliance paths: (i) a diesel path, or (ii) an alternative fuel (*i.e.*, natural gas) path.

Accordingly, under the CARB Urban Bus Program, as under the LEV Program, new CARB-certified diesel-fueled vehicles may continue to be bought and sold throughout California. The Fleet Rules, by contrast, prohibit fleet operators from purchasing CARB-certified diesel-fueled motor vehicles.

C. The SCAQMD Fleet Rules.

The Fleet Rules at issue in this case were promulgated in 2000 by the South Coast Air Quality Management District (the "SCAQMD" or "District"), a political subdivision of the State of California encompassing the greater Los Angeles metropolitan area. The Fleet Rules apply to various categories of operators of public and private fleets of motor vehicles, including transit buses, airport shuttles, limousines, taxis, street-sweepers, waste haulers, and other heavy-duty trucks. App. 15a-19a.

As to each category, the Fleet Rules prescribe that when any covered fleet operator within the District purchases or replaces its vehicles it must, in the words of the District Court, "acquire only those specific motor vehicles that the SCAQMD has designated as meeting *its standards* and requirements." App. 16a (emphasis added). Specifically, the Rules require fleet operators to procure only the types of low-emission gasoline vehicles (LEVs or ULEVs) or alternative-fuel vehicles designated by the SCAQMD, which constitute just a limited "subset" of the types of vehicles certified by CARB as meeting the State's new motor vehicle emission standards. The Fleet Rules also expressly prohibit the purchase of new vehicles equipped with CARB-certified diesel-fueled engines.[1]

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[1] For example, Fleet Rules 1191 and 1194 require fleet operators of passenger cars, light-duty trucks, medium-duty vehicles, airport shuttles, limousines and taxis to acquire only LEVs, ULEVs or alternative-fueled vehicles when procuring or leasing those types of vehicles in the District. Fleet Rule 1192 requires public transit bus fleet operators to acquire only alternative-fuel heavy-duty vehicles. Diesel-fueled transit buses, which are allowed under the CARB Urban Bus Program, are prohibited. Fleet Rules 1193, 1186.1 and 1196 apply to fleets of garbage trucks, street-sweepers and other heavy-duty trucks, and mandate the purchase or leasing of only alternative-fuel vehicles. The purchase of CARB-certified diesel-fueled vehicles—lawful for purchase elsewhere in the State—is expressly prohibited. *See* App. 15a-19a.

D. Proceedings Below.

EMA, later joined by the Western States Petroleum Association, brought suit in the District Court to enjoin the Fleet Rules, contending that the rules were preempted by the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.* Section 209(a) of the Clean Air Act prohibits States or their political subdivisions from "adopt[ing] or attempt[ing] to enforce *any standard relating to the control of emissions* from new motor vehicles or new motor vehicle engines subject to this part." 42 U.S.C. § 7543(a). The Clean Air Act's preemption provision also provides that "[n]o State shall require certification, inspection, *or any other approval relating to the control of emissions* from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment." *Id.* (Emphasis added.)

The District Court granted summary judgment to defendants. App. 27a. In the District Court's view, the Fleet Rules did not implicate the Clean Air Act's preemption provisions because they regulate only "the purchasing and leasing, not the sale, of vehicles by fleet operators." App. 21a. The court further held that "[t]he Fleet Rules do not set a 'standard relating to the control of emissions.' Rather than imposing any numerical control on new vehicles, the rules regulate the purchase of previously certified vehicles." *Id.* The District Court acknowledged the flatly contrary holdings of the First and Second Circuits, but distinguished each of those decisions on the grounds that they "hold that an attempt to limit the *sale* of vehicles is preempted." *Id.* (emphasis in original). Thus, the linchpin of the District Court's decision was its reasoning that the Clean Air Act's broad preemption of state and local emission regulations applies only to regula-

tions applicable to new motor vehicle *sales*, and not to identical regulations governing new motor vehicle *purchases*.

EMA and WSPA appealed to the Ninth Circuit. The Court of Appeals adopted the District Court's decision in whole. Specifically, the Ninth Circuit issued a published opinion adopting as its own the "well-reasoned opinion" of the District Court. App. 2a. The Court of Appeals subsequently denied EMA's request for rehearing on December 11, 2002. App. 29a.

REASONS FOR GRANTING THE WRIT

I. THE NINTH CIRCUIT'S DECISION CONFLICTS WITH THE DECISIONS OF THE OTHER FEDERAL CIRCUITS TO HAVE ADDRESSED THE ISSUE.

The Ninth Circuit's decision directly conflicts with the decisions of the First and Second Circuits on the scope and effect of the Clean Air Act's broad preemption provisions. Those decisions both found that regulations with "no purpose other than to effect a general reduction in emissions"—like the Fleet Rules here—are preempted by the Act.

In *American Auto. Mfrs. Ass'n* v. *Cahill*, 152 F.3d 196, the Second Circuit considered whether New York regulations requiring a percentage of all new vehicles sold in model years 1998-2003 to be zero-emission vehicles ("ZEVs") were preempted by the Clean Air Act. Section 209(a) of the Clean Air Act prohibits any state from "adopt[ing] or attempt[ing] to enforce any standard relating to the control of emissions from new motor vehicles." 42 U.S.C. § 7543(a). As explained above (at 6), the statute provides an exception, allowing California to adopt or enforce its own new-vehicle emissions standards, as long as California first obtains a waiver from the Environmental Protection Agency. *See* 42 U.S.C. § 7543(b). The statute also allows any other state to "opt in" to the California regulations if the state's standards

"are identical to the California standards for which a waiver has been granted for such model year" and are adopted "at least two years before commencement of such model year." *Id.* § 7507.

In the early 1990s, California adopted, and obtained a waiver for, its LEV Program, as described above. In addition to establishing progressively lower "fleet average" emissions standards for new vehicle manufacturers, the LEV Program also required that two percent of all new vehicles certified for sale in California for model years 1998-2000, five percent for model years 2001-2002, and ten percent for model year 2003, be ZEVs. New York adopted California's LEV program for light-duty vehicles pursuant to the Clean Air Act's "opt-in" provision.

California subsequently abandoned the ZEV sales requirement for model years 1998-2002, replacing it with individual Memoranda of Agreement ("MOAs") with the seven largest automobile manufacturers, requiring specific numbers of ZEVs to be sold during calendar years 1998-2000. New York, however, did not amend its regulations in response to the California changes, and automobile manufacturers challenged New York's ZEV sales requirement for model years 1998-2002 as preempted under Section 209 of the Clean Air Act.

Reviewing a district court decision which had found no preemption of the New York regulations, the Second Circuit considered whether the State's ZEV sales requirement was a "standard relating to the control of emissions" and therefore within Section 209's preemptive scope, or whether it was only an enforcement procedure and therefore not preempted. Noting that "standards relating to the control of emissions" are "regulatory measures intended to lower the level of auto emissions," the court found New York's ZEV requirement to constitute such a standard:

> To be sure, the ZEV sales requirement does not impose precise overall quantitative limits on levels of emissions, as do the classification system and fleet averages. It mandates only that a specified percentage of the [vehicles] sold by a manufacturer in any model year be ZEVs. Nevertheless, the ZEV sales requirement must be considered a standard "relating to the control of emissions." ZEV, after all, stands for "zero-emission vehicle," and a requirement that a particular percentage of vehicle sales be ZEVs *has no purpose other than to effect a general reduction in emissions* * * *. The ZEV sales requirement is, therefore, in the nature of *a command having a direct effect on the level of emissions*. [152 F.3d at 200 (emphases added).]

Finding that the ZEV sales requirement was a "standard" within the meaning of Section 209, the court concluded that the New York regulations were preempted by the Act. *See ibid.*[2] *See also MVMA*, 17 F.3d at 536 (Clean Air Act's preemption provisions prohibit limitations on the *types* of certified new motor vehicles that may be bought and sold in interstate commerce).

The First Circuit reached a similar conclusion in *Association of Int'l Auto. Mfrs.* v. *Commissioner, Mass. Dep't of Envtl. Prot.*, 208 F.3d 1, which considered Massachusetts's adoption of California's LEV program. Unlike New York, Massachusetts amended its regulations in response to the California MOAs; Massachusetts, however, did not adopt the MOAs in their entirety. The California MOAs provided that the manufacturers would develop ZEV technology and introduce a limited number of ZEVs into the California market during the years 1998-2002, and California, in

[2] The court also concluded that the New York ZEV program did not identically copy the California program as amended, and thus was not alternatively permitted under Section 177 of the Act. *Id.* at 201.

exchange, agreed to provide infrastructural support for ZEV implementation. The Massachusetts regulations were amended to reflect the automakers' obligations under the MOAs, but the reciprocal obligations undertaken by California were not also included. Automobile manufacturers challenged those regulations, arguing that because the Massachusetts program did not copy the California program in its entirety, the regulations were preempted by the Clean Air Act.

Reviewing the district court's conclusion that ZEV mandates were "standards relating to the control of emissions," the First Circuit agreed with the Second Circuit that "a requirement that a particular percentage of vehicle sales be ZEVs has no purpose other than to effect a general reduction in emissions." *Id.* at 7. The court continued:

> In contrast to [nonpreempted] "enforcement mechanisms" such as testing and reporting requirements, we think that numerical production requirements such as those in the Massachusetts ZEV mandates must be considered "standards relating to the control of emissions." Rather than simply monitoring or enforcing compliance with some distinct numerical emissions standard, *the very purpose and effect of the ZEV mandate is to effect a quantitative reduction in emissions*. [*Id.* at 6-7 (citations omitted and emphases added)].

Finding that the ZEV mandates are standards as that term is used in Section 209 of the Clean Air Act, the court concluded that Massachusetts's regulations were preempted by that section of the Act. *See id.* at 7. As a result, the court invalidated Massachusetts's ZEV program. *Id.*

As both *Cahill* and *Commissioner* emphasize, Section 209 expressly covers "standards relating to the control of emissions"; regulations are considered to be such standards where they have "no purpose other than to effect a general reduction in emissions." *Cahill*, 152 F.3d at 200; *see also Commis-*

sioner, 208 F.3d at 6. That is *exactly* the type of regulation that the South Coast Air Quality Management District has instituted here.

The Fleet Rules mandate that when certain local operators of fleets purchase or replace their fleet vehicles, they must acquire only those specific motor vehicles that the SCAQMD has designated as meeting "its standards and requirements." The Ninth Circuit recognized as much. App. 16a, 2a. Such regulations, which collectively require fleet operators to purchase or lease *only* low-emission or alternative-fuel vehicles, have "no purpose other than to effect a general reduction in emissions." *Cahill*, 152 F.3d at 200; *see also Commissioner*, 208 F.3d at 6.

Indeed, by requiring fleet operators—a group which by its nature controls large numbers of pollution-emitting vehicles in a given area—to purchase or lease vehicles with lower emissions, the SCAQMD imposed rules that would lead to a quantitative reduction in emissions. Even the District Court explicitly recognized that the SCAQMD adopted the Fleet Rules "in an effort to reduce public exposure to motor vehicle pollution." App. 15a. Thus, because the Fleet Rules are "regulatory measures intended to lower the level of auto emissions," *Cahill*, 152 F.3d at 200, they are "standards relating to the control of emissions" preempted by Section 209 of the Clean Air Act.[3]

[3] Furthermore, the extent to which the Fleet Rules actually serve to reduce the total level of emissions within the District is irrelevant. As the First Circuit observed in *Commissioner*, "Massachusetts' original contention that the ZEV mandates should not be considered standards simply because they would have a very small impact on overall emissions levels is unpersuasive—whether a regulation effects a small or great impact on overall emissions is a question of degree, not one of kind." 208 F.3d at 6.

But the Ninth Circuit concluded that "the Fleet Rules do not set a 'standard relating to the control of emissions.'" App. 21a, 2a. In support of this conclusion, the court distinguished *Cahill* and *Commissioner* by stating that "[t]hese cases hold that an attempt to limit the *sale* of vehicles is preempted. * * * It does not follow, however, that a rule regulating the *purchase* of vehicles is such a standard." App. 23a, 2a (emphasis in original).

Nowhere, however, does the Clean Air Act limit the "standards relating to the control of emissions" to rules regulating the *sale* of vehicles. Rather, the plain language of the Act makes clear that "standards" are found to exist where emissions levels are regulated, regardless of the means used. *See* 42 U.S.C. § 7543(a) (prohibiting states from imposing "*any* standard relating to the control of emissions") (emphasis added); *see also Commissioner*, 208 F.3d at 6; *Cahill*, 152 F.3d at 200.[4]

In addition, the Ninth Circuit's purely semantic distinction does not bear up under even slight scrutiny. It is impossible to imagine a situation in which a regulatory limit on *purchases* does not necessarily affect *sales*—especially here, where the customer base, fleet operators, is distinct. When all fleet operators in the South Coast Air Basin are required

[4] One might argue that the Ninth Circuit read the Clean Air Act's ban on restrictions as limited to "sales," rather than "purchases," from the second sentence in Section 209(a) of the Clean Air Act, which provides that no state shall put measures into place to control emissions as a "condition precedent to the initial retail sale, titling (if any), or registration" of a motor vehicle. 42 U.S.C. § 7543(a). However, this provision (which the court did not discuss at all), must be read in context with the broad prohibition in the first sentence of Section 209(a). *Id.* Thus, the prohibited standards include duties the state may place on the manufacturer (such as requirements before a sale), or on the consumer (such as requirements before titling and registration, or in this instance, limits on purchases).

to purchase only certain low-emissions or alternative-fuel vehicles for public transit, street sweeping, waste collection, and other public purposes, sales of such vehicles inevitably will be affected. The Ninth Circuit's attempt to characterize the Fleet Rules as only affecting vehicle purchases, and not sales, is therefore untenable; the Fleet Rules, like the New York and Massachusetts ZEV regulations, impact the trade of vehicles in their respective regions and in turn are standards "having a direct effect on the level of emissions," as contemplated by the Act.

The Court of Appeals also tried to distinguish the Fleet Rules from the ZEV regulations by noting that the Fleet Rules "regulate the purchase of previously-certified vehicles," rather than "imposing any numerical control on new vehicles." App. 21a, 2a. But, again, there is no support for the contention that "standards" as used in the Act are only those regulations that impose some type of a numerical requirement on manufacturers.

Moreover, as noted above, the Fleet Rules *do* impose numerical requirements on manufacturers, even if they do so indirectly. The truth of this observation is strongly supported by EPA's opinion letter discussed in *Commissioner*, in which the EPA provided its understanding of the term "standard" under the Act:

> Setting the link between the emission limit and the applicability of the limit to a particular number of vehicles is an inherent part of the standard setting process. * * * If a production requirement, such as the ZEV mandate, is not considered part of the standard itself, then the compliance with a standard * * * would be disconnected from the obligation to build cars to meet the standard. This could lead to emission standards that

> have no air quality benefit at all. [208 F.3d at 6 (quoting EPA Opinion Letter at 9).][5]

In addition to emphasizing that impact on emissions is the primary criterion in determining whether a regulation is a Clean Air Act "standard," the EPA letter reveals that state motor vehicle requirements must be read in terms of their practical application. In this case, the Fleet Rules require fleet operators to purchase only low-emission or alternative-fuel vehicles. As a result, manufacturers must provide more fleet vehicles that are LEVs, ULEVs, or that operate on alternative fuels. Indeed, if the Fleet Rules' purchase requirements were not considered part of the "standard," there would be a similar compliance "disconnect" here. Thus, despite the fact that the Fleet Rules do not impose numerical requirements *directly* on manufacturers, they nonetheless impose standards that require manufacturers to build more vehicles of certain lower emissions levels or fuel types, and thus in the EPA's construction are "standards" under the Act.

In short, both the First and Second Circuits, *and* the EPA, have concluded that regulations are Clean Air Act "standards" when they seek to bring about a general reduction in

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[5] Before the First Circuit decided *Commissioner*, it referred several questions to the Environmental Protection Agency under the doctrine of primary jurisdiction. *See Commissioner*, 208 F.3d at 3-4. The EPA responded in an opinion letter, in which it opined, as disclosed in the quote above, that the Massachusetts ZEV mandates are "standards" for purposes of Sections 209 and 177 of the Clean Air Act. *See id.* at 6. The First Circuit subsequently decided, however, that its referral to the EPA was "somewhat inartful," because the EPA opinion letter was not final agency action warranting any particular deference, but rather was an "advisory opinion only." *Id.* at 5-6. As a result, the First Circuit did not rely on the EPA's conclusion that the ZEV mandates are standards as that term is used in Sections 209 and 177 of the Act; nonetheless, it independently agreed with the EPA on this point. *See id.* at 7.

emission levels. The Fleet Rules, just like the ZEV regulations in New York and Massachusetts, were instituted to reduce emissions levels, and for this reason are identical to the regulations deemed "standards" by the First and Second Circuits. Yet, the Ninth Circuit failed to find federal preemption of these "standards." Thus, the Ninth Circuit's ruling creates a circuit split—and an especially intolerable one, because it introduces disparity in the operation of a federal law specifically armed with a preemption clause intended to promote national uniformity.

II. THE NINTH CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S PREEMPTION JURISPRUDENCE.

The scope of the Clean Air Act's express preemption of state and local regulation of emissions from new motor vehicles is expansive. This Court has long recognized that Section 209(a) of the Act comprehensively preempts state and local regulation of new motor vehicle emissions. *See Washington* v. *General Motors Corp.*, 406 U.S. 109, 114 (1972) ("Congress has largely pre-empted the field with regard to 'emissions from new motor vehicles' ").[6]

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[6] *See also Commissioner,* 208 F.3d at 3 (Congress "expressly preempted *all* state regulation of new motor vehicle emissions") (emphasis added); *Motor Vehicle Mfrs. Ass'n* v. *New York State Dep't of Envtl. Conservation,* 79 F.3d 1298, 1302 (2d Cir. 1996) ("In general, state regulation of automotive tailpipe emissions is preempted by the federal Clean Air Act"); *Motor & Equipment Mfrs. Ass'n* v. *EPA,* 627 F.2d 1095, 1109 (D.C. Cir. 1979) ("Congress in 1967 expressed its intent to occupy the regulatory role over emissions control to the exclusion of all the states, all, that is, except California"), *cert. denied*, 446 U.S. 952 (1980); *City of Chicago* v. *General Motors Corp.*, 467 F.2d 1262, 1264 (7th Cir. 1972) (section 209(a) preempts "the entire field of standards for emissions from new motor vehicles").

The consistency of the holdings regarding the breadth of the Clean Air Act's express preemption provisions is not surprising. Section 209(a) preempts state and local governments both from adopting or enforcing "any standard relating to the control of emissions from new motor vehicles" and from requiring "certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle * * * as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle." 42 U.S.C. § 7543(a). Taken together, these dual preemptions encompass virtually all state or local regulations directed at controlling emissions from new motor vehicles.

The Ninth Circuit, however, rejected this well-established jurisprudence relating to the Clean Air Act, and held that the SCAQMD Fleet Rules fall within neither of the two complementary preemption provisions of Section 209(a). That holding should not stand. The Fleet Rules *are* a "standard relating to the control of emissions from new motor vehicles," as both the First and Second Circuit have held. In addition, in certain situations the Fleet Rules require fleet operators to obtain approval certificates from the District as a condition precedent to the purchase of new vehicles. That too is expressly preempted by Section 209(a). Thus, the Ninth Circuit's ruling is in direct conflict with controlling jurisprudence relating to Section 209(a).

The Ninth Circuit's decision also flatly conflicts with this Court's numerous holdings recognizing the breadth of the phrase "relating to" when used in preemption statutes. *See, e.g., Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992) (the phrase "related to" used in a preemption statute "express[es] a broad preemptive purpose"). Instead, and contrary to this Court's precedent, the lower court strained to narrow the scope of the Clean Air Act's express preemption provisions and improperly looked beyond its plain meaning in a freewheeling reconstruction of legislative

history. *See Geier* v. *American Honda Motor Co.*, 529 U.S. 861, 906 (2000) ("a freewheeling judicial inquiry into whether [state law] is in tension with federal objectives would undercut the principle that it is Congress [and federal agencies] rather than the courts that preempt state law.") (Brackets in original). The result of the Ninth Circuit's disregard of the express terms of the Clean Air Act is a wholesale evisceration of preemption and Congressional purpose, all contrary to this Court's prior decisions.[7]

The Fleet Rules clearly "relate to" the "control of emissions from new motor vehicles." Indeed, control of emissions is the entire purpose and effect of the Fleet Rules. App. 15a (noting that Fleet Rules are "an effort to reduce public exposure to motor vehicle pollution"). There can be no doubt that the Fleet Rules are "in connection with" the control of emissions, or that their "purpose and effect * * * is to effect a quantitative reduction in emissions." *Commissioner*, 208 F.3d at 7. Moreover, it can hardly be disputed that the Fleet Rules make "reference to" the control of emissions given that they incorporate a subset of vehicle standards approved by CARB for purposes of emissions control. The fact that the Fleet Rules expressly limit the purchase of vehicles to those that are certified to a subset of the applicable California numerical emission limits, while prohibiting the purchase of vehicles that comply with other valid California and federal emission limits, necessarily

[7] The court's "freewheeling" approach also yielded a result in direct conflict with the recently expressed view of the United States on the broad scope of preemption "relating to" new motor vehicles. *See* Br. Amicus Curiae of the United States, *Central Valley Chrysler-Plymouth, Inc.* v. *Michael P. Kenny*, No. 02-16395 (9th Cir.) (arguing that "under the 'connection with or reference to' standard embraced by the Supreme Court, the California emission control regulations at issue [in that case] are clearly preempted"). An excerpt of the United States' submission in the *Central Valley* case is appended hereto. App. 30a-42a.

means that the Rules are preempted "standards" relating to control of vehicle emissions. The Ninth Circuit's ruling to the contrary thus clearly warrants review.

III. THE QUESTION PRESENTED IS AN ISSUE OF NATIONAL IMPORTANCE AND SHOULD BE DECIDED BY THIS COURT.

Preemption is the "cornerstone" of the portions of the Clean Air Act governing the regulation of new motor vehicles. *MVMA*, 17 F.3d at 526. The Ninth Circuit's decision substantially undermines the Clean Air Act's preemption provisions; it thus presents an issue of national importance, particularly to the United States Government and the EPA.[8] If the court's holding stands, any State or political subdivision may enact its own unique emission requirements simply by prescribing that no one subject to its jurisdiction may purchase or lease a new motor vehicle that is not an alternative-fuel vehicle, or that no one may purchase or lease a new motor vehicle that, for example, is not a "low emission vehicle" by some definition. And there would be no assurance whatsoever that each state and political subdivision would designate the same "subset" of "approved" new motor

[8] *See* Br. of United States as Amicus Curiae, *Motor Vehicle Mfrs Ass'n* v. *New York State Dep't of Envtl. Conservation*, 79 F.3d 1298 (discussing challenge to California regulations alleged to violate Clean Air Act's "third vehicle" prohibition); Br. of United States as Amicus Curiae, *MVMA*, 17 F.3d 521 (discussing challenge under Clean Air Act to State rules regulating tailpipe emissions); *see also* Br. of United States as Amicus Curiae, *Norfolk S. Ry. Co.* v. *Shanklin*, 529 U.S. 344 (2000) (noting "strong interest" of United States in how statute with an express preemption provision—there, the Federal Railroad Safety Act—is "interpreted and applied"); Br. of United States as Amicus Curiae, *Buckman Co.* v. *Plaintiffs' Legal Comm.*, 531 U.S. 341 (2001) (noting "substantial interest" of United States in question whether federal law preempted state-law tort claims alleging fraud on the FDA).

vehicles. The result would be that interstate commerce in motor vehicles would be subjected to the varying requirements of the fifty states and their thousands of political subunits—the very result Congress meant to avoid by explicitly preempting regulation in this field.

Congress broadly preempted local regulations relating to the control of emissions from new motor vehicles specifically "to prevent a chaotic situation from developing in interstate commerce in new motor vehicles," H.R. Rep. No. 90-728 (1967), *reprinted in* 1967 U.S.C.C.A.N. 1938, 1956, and to avoid "the spectre of an anarchic patchwork of federal and state regulatory programs, a prospect which threatened to create nightmares for the manufacturers." *Engine Mfrs. Ass'n* v. *EPA*, 88 F.3d at 1079. The Fleet Rules bring that chaos to life, and the Ninth Circuit's decision upholding the rules flouts Congress's express directive against balkanization of the nationwide market for new motor vehicles. The impact of such a fractured market for new motor vehicles in the United States would be to increase significantly the cost of manufacturing marketable vehicles and engines.

The Ninth Circuit's decision not only fractures the nationwide market for motor vehicles, it also undermines the ability of the Federal government to establish, implement and achieve its emission standards for new motor vehicles. In preempting states and local governments from regulating new motor vehicles, Congress also imposed on the Federal government the obligation to set emission standards for, and reduce emissions from, new motor vehicles. 42 U.S.C. § 7521. The primacy of EPA's nationwide emission reduction standards was recognized by Congress. Thus, California may obtain a waiver of federal preemption for its standards only if, among other things, EPA determines that the California standards are "at least as stringent as" and "at least as protective of health and welfare as" the comparable Federal standards. 42 U.S.C. § 7543(b).

However, under the Ninth Circuit's decision, political subdivisions of states are free to mandate the purchase of any subset of the types of new motor vehicles certified by EPA or California. While the SCAQMD has attempted to pick and choose its subsets ostensibly to set more stringent emission standards, there is nothing in the Ninth Circuit's decision that would prevent a political subdivision from adopting a local mandate requiring the purchase of the highest emitting certified vehicles while prohibiting the purchase of the lowest emitting vehicles. Such an approach, implicitly condoned by the Ninth Circuit, would undermine the Federal government's ability to reduce emissions from new motor vehicles, which suggests that the United States Government would want to be heard on this issue (*see supra* n.8), and which further warrants this Court's review.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDICES

APPENDIX A

PUBLISHED AT 309 F.3d 550

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 01-56688
(D.C. No. CV-00-09065-FMC)

ENGINE MANUFACTURERS ASSOCIATION, *et al.*,
Plaintiffs-Appellants,

v.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, *et al.*,
Defendants-Appellees.

Filed October 24, 2002

OPINION

Appeal from the United States District Court for the Central District of California, Florence Marie Cooper, District Judge, Presiding, D.C. No. CV-00-09065-FMC.

Before GOODWIN, RYMER, and McKEOWN, Circuit Judges.

ORDER

Engine Manufacturers Association and Western States Petroleum Association appeal the district court's judgment that the fleet rules adopted by the South Coast Air Quality Management District are not preempted by the Clean Air Act.

We affirm the decision of the district court for the reasons stated in its well-reasoned opinion, reported at *Engine Mfrs. Ass'n* v. *South Coast Air Quality Mgmt. Dist.*, 158 F.Supp.2d 1107 (C.D. Cal. 2001).[1]

AFFIRMED.

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[1] We decline to consider Amici's arguments regarding § 246 of the Clean Air Act. "Generally, we do not consider on appeal an issued raised only by amicus." *Swan* v. *Peterson*, 6 F.3d 1373, 1383 (9th Cir. 1993).

APPENDIX B

PUBLISHED AT 158 F.Supp.2d 1107

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

No. CV 00-09065-FMC (BQRx)

ENGINE MANUFACTURERS ASSOCIATION, *et al.*,
Plaintiffs,

v.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, *et al.*,
Defendants.

Filed August 22, 2001

OPINION

ORDER RE CROSS MOTIONS FOR SUMMARY JUDGMENT

COOPER, District Judge.

I. BACKGROUND

A. *The Parties*

Plaintiff Engine Manufacturers Association ("EMA") is the not-for-profit trade association representing the leading manufacturers of internal combustion engines used in most all medium-duty and heavy-duty motor vehicles, other than passenger cars. EMA members manufacture the medium-duty and heavy-duty compression-ignition, diesel-fueled engines that are installed in certain pickup trucks and sports-utility vehicles, delivery vans, shuttle vans, and cargo vehicles, trucks, tractor-trailers, waste haulers, street-sweepers and buses, and sold throughout the United States.

Plaintiff-in-Intervention Western States Petroleum Association ("WSPA") is a trade association organized as a nonprofit corporation under California law. Its members consist of companies engaged in the exploration, production, transportation, refining and marketing of crude oil and petroleum products, including diesel fuel.

Defendant South Coast Air Quality Management District ("SCAQMD") is the air quality management district established under the California Health and Safety Code to develop and implement a strategy for achieving and maintaining ambient air quality standards within the South Coast Air Basin. Agents of the SCAMQD, including the SCAMQD Defendants,[1] are responsible for administering the Fleet Rules at issue.

[1] The "SCAQMD Defendants" consist of thirteen (13) Board members of the SCAQMD, including the SCAQMD's Executive Director.

Defendants-in-Intervention "Environmental Intervenors" are non-profit organizations[2] dedicated to the protection of the environment and public health.

California Attorney General Bill Lockyer submitted an *amicus curiae* brief on behalf of the State of California in support of the SCAQMD's motion for summary judgment and in opposition to the crossmotions for summary judgment filed by EMA and WSPA.

B. *The South Coast Air Basin*

The South Coast Air Basin ("the Basin"), which includes Los Angeles, San Bernardino, Riverside, and Orange Counties, experiences the most serious air quality problems in the nation, primarily due to motor vehicle pollution. (Staff Report ("SR") 1191-1, p. 7439). It is the only air basin in the country classified by the United States Environmental Protection Agency ("E.P.A.") as an extreme nonattainment area. *See* 42 U.S.C. § 7511(a). On-road motor vehicles contribute more than one-half of the ozone precursors emitted in the Basin and are a principal source of toxic pollution. (Administrative Record ("AR") 57 R-6252).

Emission of particulate matter from diesel vehicles and equipment is the most significant individual toxic air pollutant in the Basin, accounting for fully seventy-one percent (71%) of the air-borne cancer risk. (AR 57 R-6258). The California Air Resources Board ("CARB") has formally designated particulate emissions from diesel-fueled vehicles as a Toxic Air Contaminant. Studies reveal that exposure to diesel exhaust increases the risk of developing lung cancer and other non-cancer adverse health effects. (AR 41

[2] The non-profit organizations include: Coalition for Clean Air, Inc.; Natural Resources Defense Council, Inc.; Communities for a Better Environment, Inc.; Planning and Conservation League; and Sierra Club.

R-1840). Diesel exhaust has also long been considered a probable human carcinogen by the National Institute of Occupational Safety and Health and by the International Agency for Research on Cancer. (AR 41 R-1841).

Diesel trucks and buses are also significant contributors to smog and fine particles, two pollutants that have serious public health impacts. On-road motor vehicles contribute more than half of all smog-forming hydrocarbons and oxides of nitrogen in the entire emissions inventory. (SR 1191-1, p. 7439). More than ninety-percent (90%) of the particles emitted from diesel engines are fine particles. (AR 54 R-5514-5515). Fine particles are particularly hazardous, because they can bypass respiratory defense mechanisms and penetrate deeply into the lungs. (AR 20 R 5783). The presence of high quantities of fine particles in the air has been shown to lead to higher mortality rates, greater occurrences and severity of asthma, cardiovascular disease, and potentially to a higher incidence of cancer. (AR 39 R-1325).

C. Legislative Background

1. The Clean Air Act

The Clean Air Act, 42 U.S.C. §§ 7401-7671q ("CAA"), "is one of the most comprehensive pieces of legislation in our nation's history." *Motor Vehicle Mfrs. Ass'n* v. *New York State Dep't of Envtl. Conservation,* 17 F.3d 521, 524 (2d Cir.1994). The CAA makes "the States and the Federal Government partners in the struggle against air pollution." *General Motors Corp.* v. *U.S.*, 496 U.S. 530, 532, 110 S. Ct. 2528, 110 L. Ed. 2d 480 (1990). A primary purpose of the CAA is "to encourage or otherwise promote reasonable Federal, State, and local governmental actions, consistent with the provisions of this chapter, for pollution prevention." 42 U.S.C. § 7401(c). Additionally, Congress envisioned the CAA as a means of encouraging and assisting "the development and operation of regional air pollution prevention and control programs." 42 U.S.C. § 7401(b)(4).

The CAA directs the E.P.A. to establish and enforce national ambient air quality standards ("NAAQS") for pollutants that "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7408(a). To achieve and maintain these NAAQS by regulating sources of air pollution, each state is required to submit a state implementation plan ("SIP") to the EPA for approval. CAA § 110, 42 U.S.C. § 7410(a)(1). However, states may not promulgate individual motor vehicle emission standards to attain the NAAQS set by the EPA. Section 209(a) expressly preempts all state regulation of motor vehicle emissions. Congress preempted the field of vehicle emission regulation for two reasons: "to ensure uniformity throughout the nation, and to avoid the undue burden on motor vehicle manufacturers which would result from different state standards." *Motor Vehicle Mfrs. Ass'n* v. *New York State Dep't of Envtl. Conservation,* 810 F.Supp. 1331, 1337 (N.D.N.Y.1993), *aff'd in part, rev'd in part,* 17 F.3d 521 (2d Cir.1994).

"Both the history and text of the [CAA] show that the * * * preemption section was made not to hamstring localities in their fight against air pollution but to prevent the burden on interstate commerce which would result if, instead of uniform standards, every state and locality were left free to impose different standards for exhaust emission control devices for the manufacture and sale of new cars." *Allway Taxi Inc.* v. *City of New York*, 340 F.Supp. 1120,1124 (S.D.N.Y.1972).

2. Preemption

The United States Supreme Court has given substantial weight in the preemption analysis to evidence that Congress intended to preserve the state regulatory authority, stating

that courts must "give full effect to evidence that Congress considered, and sought to preserve, the States' coordinate regulatory role in our federal scheme." *California* v. *Fed. Energy Regulatory Comm'n,* 495 U.S. 490, 497, 110 S. Ct.. 2024, 109 L. Ed. 2d 474 (1990). Moreover, the Supreme Court has cautioned that preemption provisions must be narrowly and strictly construed. *See Kelly* v. *Robinson,* 479 U.S. 36, 43, 107 S. Ct. 353, 93 L. Ed. 2d 216 (1986); *see also Charas* v. *Trans World Airlines, Inc.*, 160 F.3d 1259, 1265 (9th Cir.1998); *Chrysler Corp.* v. *Tofany,* 419 F.2d 499, 511 (2d Cir.1969) (where exercise of local police power serves the purpose of a federal Act, the preemptive effect of that Act should be narrowly construed).

The Clean Air Act explicitly protects the authority of states to regulate air pollution. The first section of the CAA, entitled "Congressional Findings", 42 U.S.C. § 7401, makes clear that the states retain the leading authority in regulating matters of health and air quality: "air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source is the primary responsibility of States and local governments." 42 U.S.C. § 7401(a)(3). Similarly, 42 U.S.C. § 7407, which focuses on SIPs, provides: "Each state shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State." 42 U.S.C. § 7407(a).

"In preemption analysis, the Supreme Court is highly deferential to state law in areas traditionally regulated by the states." *Exxon Mobil Corp.* v. *U.S. E.P.A.*, 217 F.3d 1246, 1255 (9th Cir. 2000). The Court has explained:

> [W]e have never assumed lightly that Congress has derogated state regulation, but instead have addressed claims of preemption with the starting presumption that Congress does not intend to supplant state law * * * [I]n cases like this one, where federal law is said to bar state action in fields of traditional state regulation * * * we have worked on the "assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress."

N.Y. State Conference of Blue Cross & Blue Shield Plans v. *Travelers Ins. Co.,* 514 U.S. 645, 654-55, 115 S. Ct. 1671, 131 L. Ed. 2d 695 (1995) (internal citations omitted). "Air pollution prevention falls under the broad police powers of the states, which include the power to protect the health of citizens in the state. Environmental regulation has traditionally been a matter of state authority." *Exxon Mobil Corp.*, 217 F.3d at 1255; *see also Massachusetts* v. *U.S. Dep't of Transp.,* 93 F.3d 890, 894 (D.C.Cir.1996).The Supreme Court has directed that the preemption analysis begin with the presumption that such local police powers are not preempted: "Throughout our history the several States have exercised their police powers to protect the health and safety of their citizens. Because these are 'primarily, * * * matter[s] of local concern,' the 'States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons.'" *Medtronic, Inc.* v. *Lohr,* 518 U.S. 470, 475, 116 S. Ct. 2240, 135 L. Ed. 2d 700 (1996) (internal citations omitted). The CAA "explicitly preserved this principle: 'Each state shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State.'" *Train* v. *Natural Res. Def. Council, Inc.,* 421 U.S. 60, 64, 95 S. Ct. 1470, 43 L. Ed. 2d 731 (1975).

Furthermore, the Supreme Court has made clear that the objectives and purpose of a statute, as well as the text, are critical to the preemption analysis. *See Travelers,* 514 U.S. at 654, 115 S. Ct. 1671; *Medtronic,* 518 U.S. at 486, 116 S. Ct. 2240. "The overriding purpose of the Clean Air Act is to force states to do their job in regulating air pollution effectively so as to achieve baseline air quality standards, the NAAQS. The primary mechanism for achieving the NAAQS are through the local and state planning process which create the SIPs." *Exxon Mobil Corp.*, 217 F.3d at 1255-56. "As regulating air pollution falls under the historic police powers of the states, the authority of the states is assumed not to have been preempted unless it was the clear and manifest purpose of Congress to do so." *Id.* at 1256; *see also Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S. Ct. 1146, 91 L. Ed. 1447 (1947) ("[W]e start with the assumption that the historic police powers of the States were not to be superceded by the Federal Act unless that was clear and manifest purpose of Congress.").

3. Legislative History of the Clean Air Act

The original CAA, enacted by Congress in 1955, was aimed primarily at increasing federal research and assistance in air pollution prevention. It made no provision for federal motor vehicle emission standards. After several states adopted their own motor vehicle emission standards, the Senate Committee on Public Works decided that national standards were to be preferred over having each state go its own way, "which could result in chaos insofar as manufacturers, dealers, and users are concerned." S. Rep. No. 192, 89th Cong., 1st Sess. 5-6 (1965). As a result, Congress enacted emission standards for new motor vehicle engines.

Despite this enactment, a number of states continued to develop separate emission ; ograms. Congress promptly amended the CAA in 1967 to impose federal preemption

over motor vehicle emission standards. *See* Air Quality Act of 1967, Pub. L. No. 90-148, § 208, 81 Stat. 485. An exception, however, was made for California because of its "unique problems" and its "pioneering efforts" to control its particularly severe air quality problems. *Id.* at § 208(b); S. Rep. No. 403, 90th Cong., 1st Sess. (1967). In 1970, the Act was amended to establish national ambient air quality standards ("NAAQS"), which required even more stringent uniform emission standards for new motor vehicles. *See* Clean Air Amendments of 1970, Pub. L. No. 91-604, §§ 4, 6, 84 Stat. 1676.

In 1990, the Clean Air Act was amended once again. Title I of the Act directs the E.P.A. Administrator to develop NAAQS for pollutants the Administrator determines "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7408(a)(1)(A). The states are vested with the primary responsibility for attaining and maintaining the NAAQS through the development and implementation of a state implementation plan ("SIP"). *See* CAA § 110, 42 U.S.C. § 7410. Each state's SIP, which is submitted to the E.P.A., must explain exactly how the state intends to reduce or maintain the concentration of pollution in the air to meet the NAAQS. "The states have broad license to institute their own programs for the reduction of air pollution. * * *" *Motor Vehicle Mfrs. Ass'n,* 17 F.3d at 525.

Title II of the Act reflects Congress' endeavor to resolve the problems caused by moveable sources or vehicle emissions. The emission standards applicable to any given vehicle depend upon its weight and use classification, and its model year designation. *See* CAA §§ 202, 207(c), 42 U.S.C. §§ 7521, 7541(c). Section 202 authorizes the E.P.A. Administrator to promulgate emission standards for motor vehicles sold in the United States. Motor vehicle emission standards primarily regulate emissions of carbon monoxide (CO),

hydrocarbons or volatile organic compounds (VOCs) and nitrogen oxides (NOx).

The "cornerstone of Title II is Congress' continued express preemption of state regulation of automobile emissions." *Motor Vehicle Mfrs. Ass'n,* 17 F.3d at 526; *see* CAA § 209(a), 42 U.S.C. § 7543(a); *see also Engine Mfrs. Ass'n* v. *U.S. Envtl. Prot. Agency,* 88 F.3d 1075, 1079 (D.C.Cir.1996). The majority of states have chosen to rely on the federal emission standards set forth in § 202 of the CAA, 42 U.S.C. § 7521. Only California enjoys a statutory exemption allowing it to promulgate its own emission standards. *See* CAA § 209(b), 42 U.S.C. § 7543(b)(1). California may only adopt and enforce its own emission standards, however, after applying to and obtaining the approval of the E.P.A. for a waiver of preemption. *See* CAA § 209(b), 42 U.S.C. 7543. The California Air Resources Board ("CARB") submits an application upon determining that its proposed standards "will be, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards." *Id.* Were California simply to change its standards, and such change were found to be within the scope of an existing waiver, California need not submit a new waiver application. *Id.*

Additionally, other states could promulgate regulations requiring vehicles sold in their state to be in compliance with California's emission standards, or, in other words, to "piggyback" onto California's preemption exception. This opt-in authority, set forth in CAA § 177, 42 U.S.C. § 7507, is carefully drafted to avoid placing "an undue burden on the automobile manufacturing industry." *Motor Vehicle Mfrs. Ass'n*, 17 F.3d at 527. Specifically: (1) an opt-in state must adopt standards identical to California's; (2) California must receive a waiver from the E.P.A. for the standards; and (3) both California and the opt-in state must adopt the standards at least two years before the beginning of the automobile

model year to which they apply. *See* CAA § 177, 42 U.S.C. § 7507.

The 1990 Amendments to the CAA added two further restrictions to § 177. First, Congress added language providing that § 177 shall not be construed as authorizing an opt-in state to limit the sale of California-certified vehicles. Second, it forbade opt-in states from taking any action that has the effect of creating a car different from those produced to meet either federal or California emission standards, a so-called "third vehicle."

4. California's Plan

Pursuant to its authority to adopt separate emission control requirements for new motor vehicle engines, California, acting through CARB, has enacted two stringent emission control programs for motor vehicles: one for light and medium-duty motor vehicles, including certain diesel-fueled vehicles (the "LEV Program"), and one for heavy-duty urban transit buses (the "Urban Bus Program").

a. The LEV Program

In adopting the LEV Program in 1990-1991, CARB established the most stringent exhaust regulations ever for light and medium-duty vehicles. The regulations include three primary elements: (1) four tiers of exhaust emission standards for increasingly stringent categories of low-emission vehicles; (2) a mechanism requiring manufacturers to phase in a progressively cleaner mix of vehicles from year to year; and (3) a requirement that a specified percentage of passenger cars and lighter light-duty trucks be zero-emission vehicles ("ZEVs"). (SR 1191-4, p. 7442).

The four tiers of exhaust emission standards, in descending order of emission levels are: (1) Transitional Low-Emission Vehicles ("TLEVs"); (2) Low-Emission Vehicles ("LEVs");

(3) Ultra-Low-Emission Vehicles ("ULEVs"); and (4) Zero-Emission Vehicles ("ZEVs"). For each category a set of more stringent emission standards for carbon monoxide, nitrogen oxides and formaldehyde applies. The LEV Program achieves emission reductions by requiring manufacturers to sell progressively cleaner mixes of vehicles over time. The average emissions from the mix of these categories of vehicles produced by a given manufacturer in a given year must meet an overall "fleet average" requirement. Automobile manufacturers, under CARB's regulations, have the flexibility to decide how many vehicles of each type they manufacture and sell in order to meet the fleet average. Additional flexibility is provided through the establishment of a marketable credit system: manufacturers may earn credits if they sell more LEVs than needed to meet the fleet average.

b. The Urban Bus Program

On February 24, 2000, CARB adopted its Urban Bus Program ("UBP") to further reduce air pollution from large urban transit buses. The UBP requires: (i) reductions in particulate matter ("PM") and oxides of nitrogen ("NOx") fleet emissions by urban transit bus operators; and (ii) stringent exhaust emission standards applicable to engine manufacturers. To implement the CARB regulation, urban transit bus fleet operators are required to choose between two different compliance paths: (i) a diesel path or (ii) an alternative fuel path. Fleet operators were required to notify CARB of their choice by January 31, 2001.

Fleet operators choosing the diesel path may continue to purchase diesel powered buses as long as they comply with emission standards. These emission requirements specify that engines meet an eighty-percent (80%) PM emission reduction by October 2002. For the 2004 model year, CARB established an optional NOx emission standard representing

an eighty-seven percent (87%) emission decrease relative to the current NOx standard. For the 2007 model year, diesel transit bus engines must comply with a NOx emission standard that would result in a ninety-five percent (95%) emission decreases relative to the current NOx standard. Transit agencies on the diesel path with more than 200 urban buses in their active fleet (on January 31, 2001) must place into service at least three zero-emission buses ("ZEBs") by July 1, 2003, and operate them for a year as a required demonstration project. From model year 2008 through model year 2015, a minimum fifteen percent (15%) of all new bus purchases or leases must be ZEBs for the transit Agencies on the diesel path. (SR 1192-4, p. 7545). ZEBs must be certified by CARB and are expected to be powered by fuel cells, electricity, or other fuels that result in zero-emission exhaust levels. (SR 1192-5, p. 7546).

The Alternative-Fuel Path requires at least eighty-five percent (85%) of new bus purchases to be alternative-fueled. Alternative fuels are defined as compressed natural gas, liquefied natural gas, liquefied petroleum gas, methanol, electricity, fuel cells, or other advanced technologies that do not rely on diesel fuel. (SR 1192-6, p. 7547; SR 1192-2, p. 7543). Transit operators would need to introduce ZEBs into their fleets by 2010. Additionally, retrofit requirements to reduce PM emissions from existing buses, are required under both paths.

D. The Fleet Rules

In response to the need for the South Coast Basin to reduce pollution levels dramatically to achieve its NAAQS, the California state legislature in 1987 adopted Health and Safety Code § 40447.5, which authorizes the SCAQMD to adopt fleet rules in an effort to reduce public exposure to motor vehicle pollution. On June 16, 2000, August 18, 2000, and October 20, 2000, the SCAQMD adopted six rules (referred

to hereinafter as the "Fleet Rules"), each of which mandates that when certain local operators of fleets purchase or replace their fleet vehicles, they must acquire only those specific motor vehicles that the SCAQMD has designated as meeting its standards and requirements.

1. Fleet Rule 1191

Rule 1191 requires passenger car, light-duty truck, or medium-duty vehicle public fleet operators to acquire low-emitting gasoline or alternative-fueled vehicles[3] when procuring or leasing these vehicles in the District. The Rule applies to all government agencies and any special districts with 15 or more on-road light and medium-duty vehicles. Rule 1191 also contains specified exemptions. (Rule 1191(f))

2. Fleet Rule 1192

Rule 1192 requires public transit fleet operators to acquire alternative-fuel heavy-duty vehicles[4] when procuring or leasing vehicles to reduce air toxic and criteria pollutant emissions. This Rule applies to public transit fleets with 15 or more public transit vehicle or urban buses, operated by government agencies or operated by private entities under contract to government agencies, that provide passenger

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3 "Alternative-fueled vehicle" is defined under the Rule as "a vehicle or engine that is not powered by gasoline or diesel fuel and emits hydrocarbon, carbon monoxide, or nitrogen oxides, on an individual basis at least equivalent to or lower than a ULEV based on [C]ARB's certification data." (Rule 1191(c)(1)).

4 "Alternative-fuel heavy-duty vehicle" is defined as a "heavy-duty vehicle, urban bus or engine that uses compressed or liquified natural gas, propane, methanol, electricity, fuel cells, or other advanced technologies that do not rely on diesel fuel," and that meets the emissions requirements of the Urban Transit Bus Rule adopted by CARB. (Rule 1192(c)(1)).

transportation services. The Rule requires these fleet operators to acquire alternative-fuel vehicles when adding or replacing vehicles. Rule 1192 also contains specified exemptions. (Rule 1192(e)).

3 Fleet Rule 1193

Rule 1193 requires public and private solid waste collection fleet operators to acquire alternative-fuel[5] refuse collection heavy-duty vehicles when procuring or leasing these vehicles. The Rule applies to government agencies and private entities that operate solid waste collection fleets with 15 or more solid waste collection vehicles. Acquisition of dual-fueled vehicles[6] is allowed for fleets of 15 or more transfer or rolloff vehicle.[7] Rule 1193 also contains specified exemptions. (Rule 1193(e)).

4. Fleet Rule 1194

Rule 1194 applies to public and private fleet operators of 15 or more vehicles that transport passengers from commercial airports located in the District. The affected vehicles include taxis, shuttles, and limousines. The Rule requires

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5 Under Rule 1193, "alternative-fuel heavy-duty vehicles" use compressed or liquefied natural gas, liquefied petroleum gas, methanol, electricity, fuel cells, or other advanced technologies that do not rely on diesel fuel. (Rule 1193(c)(1)).

6 A "dual-fuel heavy duty vehicle" is a "heavy-duty vehicle equipped with a diesel engine that uses an alternative fuel . . . in combination with diesel fuel to enable compression ignition. A dual-fuel engine typically used the alternative fuel to supply 85 percent of the total engine fuel requirement. * * *" (Rule 1193(c)(2)).

7 A "rolloff vehicle" is "any heavy-duty vehicle used for the express purpose of transporting waste containers such as open boxes or compactors." (Rule 1193(c)(5)).

passenger car, light-duty truck, medium-duty transit vehicle, and heavy-duty transit vehicle fleet operators to acquire cleaner burning or alternative-fueled vehicles[8] when procuring or leasing these vehicles in the District, unless otherwise exempt. Fleet operators using passenger cars or medium-duty vehicles to provide airport transportation services must purchase a specified percentage of vehicles that meet CARB's standards for ultra low emission vehicles. Fleet operators that use heavy-duty vehicles must purchase alternative-fuel vehicles. Specified exemptions are provided for under this Rule as well. (Rule 1194(e)).

5. Fleet Rule 1186.1

Rule 1186.1 requires certain public and private sweeper fleet operators to acquire alternative-fuel or otherwise less-polluting sweepers when purchasing or leasing these vehicles for sweeping operations undertaken by or for governments or governmental agencies in the District's jurisdiction. Rule 1186.1 also requires government agencies that contract for sweeping services to solicit bids or contract for services that use alternative-fuel sweepers. An "alternative-fuel sweeper" is one with "engine(s) that use compressed or liquefied natural gas, liquefied petroleum gas (propane), methanol, electricity, or fuel cells. Hybrid-electric and dual-fuel technologies that use diesel fuel are not considered alternative-fuel technologies for the purposes of this rule." (Rule 1186.1(c)(2)). Specified exemptions are also provided for. (Rule 1186.1(f)).

6. Fleet Rule 1196

Rule 1196 requires public fleet operators of heavy-duty vehicles to acquire alternative-fuel heavy-duty vehicles when

[8] An "alternative-fueled vehicle" means "a light or medium-duty vehicle, or heavy-duty transit vehicle or engine that is not powered by gasoline or diesel fuel." (Rule 1194(c)(2)).

procuring or leasing these vehicles. The Rule applies to all government agencies located in the District and to any special districts such as water, air, sanitation, transit, and school districts, with 15 or more heavy-duty vehicles. These operators must acquire alternative-fuel vehicles, dual-fuel vehicles, or dedicated gasoline vehicles when adding or replacing heavy-duty vehicles. Specified exemptions are provided for under the Rule as well. (Rule 1196(f)).

E. Procedural History

On November 21, 2000, Plaintiff EMA filed its First Amended Complaint against the SCAQMD Defendants for declaratory and injunctive relief, challenging the constitutionality of the Fleet Rules. Specifically, Plaintiff EMA claims the Fleet Rules violate Sections 209 and 177 of the federal Clean Air Act, 42 U.S.C. §§ 7543 and 7507, as well as the Supremacy Clause of the United States Constitution, U.S. Const. Art. V1, cl. 2, and are therefore preempted as a matter of law. On January 17, 2001, Plaintiff-in-Intervention WSPA also brought suit against the SCAQMD Defendants and the Environmental Intervenors for declaratory and injunctive relief, claiming the Fleet Rules violate CAA §§ 209 and 177 and the Supremacy Clause.[9]

On March 23, 2001, Plaintiffs and Defendants filed cross motions for summary judgment. Plaintiffs moved for summary judgment on counts one (1) through six (6) of their respective Complaints.[10] On April 20, 2001 California

[9] Plaintiff EMA and Plaintiff-in-Intervention WSPA will hereinafter collectively be referred to as "Plaintiffs." The SCAQMD Defendants and Defendants-in-Intervention Environmental Intervenors will hereinafter collectively be referred to as "Defendants."

[10] On July 25, 2001 the parties entered into a stipulated dismissal of count seven (7) of Plaintiff EMA's First Amended Complaint.

Attorney General Bill Lockyer submitted an *amicus curiae* brief on behalf of the State of California in support of Defendants' Motions for Summary Judgment and in opposition to Plaintiffs' Motions for Summary Judgment.

The parties have stipulated that this case should be adjudicated on the pleadings, as no material factual disputes are at issue. The case turns entirely on the scope of the express preemption provisions of §§ 209 and 177 of the Clean Air Act. After considering the parties' written and oral arguments, the Court issues the following decision:

II.

DISCUSSION

A. CAA § 209(a)

Section 209(a) of the Clean Air Act provides:

> No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment. 42 U.S.C. § 7543(a).

Plaintiffs argue that the Fleet Rules violate CAA § 209(a) because they constitute "standard[s] relating to the control of emissions from new motor vehicles or new motor vehicle engines." Plaintiffs also assert that the Fleet Rules establish unlawful conditions precedent to the sale of new motor vehicles or engines.

The Court does not accept Plaintiffs' interpretation of the impact of the Fleet Rules. The Rules regulate the purchasing and leasing, not the sale, of vehicles by fleet operators. Fleet operators are required to purchase "cleaner" vehicles when adding or replacing fleet vehicles. The Fleet Rules accept as given the existing CARB vehicle standards; they merely require fleet operators to choose from among the least polluting of CARB-certified, available vehicles. The Rules impose no new emission requirements on manufacturers whatsoever, and therefore do not run afoul of Congress's purpose behind motor vehicle preemption: namely, the protection of manufacturers against having to build engines in compliance with a multiplicity of standards. *See People of State of Cal. ex rel. State Air Resources Bd.* v. *Department of Navy*, 431 F.Supp. 1271, 1285 (N.D.Cal.1977), *aff'd by* 624 F.2d 885 (9th Cir.1980) ("The reasons given for the enactment of the preemption provision can be summarized as follows: to protect the manufacturer against having to build engines, which would comply with a multiplicity of standards; to protect the vehicle owner from having to deal with different standards in each state in which he drives; to avoid the unnecessary duplication of federal standards; to avoid 'unnecessary expense' to the owner; and generally to avoid 'chaos' and 'confusion.' " (internal citations omitted)).

Furthermore, the Fleet Rules do not set a "standard relating to the control of emissions." Rather than imposing any numerical control on new vehicles, the rules regulate the purchase of previously-certified vehicles. Plaintiffs rely primarily on two cases to support their contention that the Fleet Rules constitute unlawful standards: *Am. Auto. Mfrs. Ass'n* v. *Cahill,* 152 F.3d 196 (2d Cir.1998) and *Ass'n of Int'l Auto. Mfrs., Inc.* v. *Commissioner,* 208 F.3d 1 (1st Cir.2000). These cases hold that an attempt to limit the *sale* of vehicles is preempted. In *Cahill* and *Commissioner,* the states of New York and Massachusetts, respectively, adopted California's emission standards targeting ZEVs. Under the California

regulations, two percent (2%) of all new vehicles certified for sale in California for model years 1998-2000, five percent (5%) for model years 2001-2002, and ten percent (10%) for model year 2003 were required to be ZEVs. California's program was granted a § 209(b) waiver by the E.P.A. in 1993, and New York and Massachusetts adopted the program pursuant to CAA § 177.[11] Both the Second Circuit in *Cahill* and the First Circuit in *Commissioner* held that "the ZEV sales requirement must be considered a standard 'relating to the control of emissions.'" *Cahill,* 152 F.3d at 200; *Commissioner,* 208 F.3d at 6. The ZEV program mandated that a specified percentage of cars sold by manufacturers in any

[11] *In Cahill,* the state of New York adopted California's LEV program for light-duty vehicles pursuant to the CAA's opt-in provision. New York's classification system, fleet average requirements, and ZEV sales requirements were identical, with one exception, to those of California for model years 1998-2003. That exception concerned medium-duty vehicles, which were included in California's ZEV requirements but not in New York's. Additionally, New York maintained the ZEV sales requirement for model years 1998-2002 even after California had abandoned it. The automobile manufacturers associations brought suit to prevent the enforcement of New York's 1998-2002 ZEV sales requirement.

In *Commissioner,* automobile manufacturers brought suit against the Massachusetts Department of Environmental Protection, claiming automobile emission standards adopted by the state of Massachusetts were preempted by the CAA. After California repealed its ZEV requirements for the model years 1998-2000, it entered into memoranda of agreements ("MOAs") with seven major automakers by which the manufacturers agreed to develop ZEV technology and introduce a limited number of ZEVS into the California market. In exchange, California agreed to provide infra-structural support for ZEV implementation. Massachusetts amended its ZEV mandates to reflect the automakers' obligations under the MOAs, but did not include the reciprocal obligations undertaken by California.

model year be ZEVs. "The ZEV sales requirement is, therefore, in the nature of a command having a direct effect on the level of emissions, rather than in the nature of a means of enforcing, or testing the effectiveness of, a command." *Cahill,* 152 F.3d at 200.

It does not follow, however, that a rule regulating the *purchase* of vehicles is such a standard. The Fleet Rules require purchasers to choose from among a subset of previously certified California vehicles. Where a state regulation does not compel manufacturers to meet a new emissions limit, but rather affects the purchase of vehicles, as the Fleet Rules do, that regulation is not a standard. No restriction on the sale of vehicles is present here. Plaintiffs may continue to sell any vehicle which is otherwise certified in California.

Furthermore, CAA § 246, 42 U.S.C. § 7586, expressly recognizes that Fleet Rules must be established in areas with particularly high pollution levels, and authorizes restrictions on the purchase of fleet vehicles to meet clean-air standards. Specifically, section 246 requires that "[e]ach state in which there is located all or part of a covered area * * * shall submit * * * a State implementation plan revision * * * to establish a clean-fuel vehicle program for fleets under this section." 42 U.S.C. § 7586(a)(1). Section 246 also mandates that "a specified percentage of all new covered fleet vehicles * * * purchased by each covered fleet operator in each covered area shall be clean-fuel vehicles and shall use clean alternative fuels. * * *" 42 U.S.C. § 7586(b). It is not rational to conclude that the CAA would authorize purchasing restrictions on the one hand, and prohibit them, as a prohibited adoption of a "standard," on the other.

Additionally, through its Health and Safety Code, California has mandated these Rules be enacted by Districts with severe air quality problems. The South Coast Air Basin is the only "extreme" nonattainment area for ozone in the

country. It is classified as a "severe" nonattainment area for particulate matter and has extremely high levels of toxic air pollution throughout the region. The California legislature enacted Health and Safety Code § 40447.5 in response to the need for the South Coast Air Basin to reduce pollution. Section 40447.5 authorizes the District to "[r]equire operators of public and commercial fleet vehicles * * * in the south coast district, when adding vehicles to or replacing vehicles in an existing fleet or purchasing vehicles to form a new fleet, to purchase vehicles which are capable of operating on methanol or other equivalently clean burning alternative fuel and to require that these vehicles be operated, to the maximum extent feasible, on the alternative fuel when operating in the south coast district." Such state regulations are presumed to be valid. *See, e.g., Medtronic, Inc.* v. *Lohr,* 518 U.S. 470, 475, 116 S. Ct. 2240, 135 L. Ed. 2d 700 (1996) (stating that the preemption analysis begins with the presumption that local police powers, such as air pollution prevention, are not preempted: "Throughout our history the several states have exercised their police powers to protect the health and safety of their citizens. Because these are 'primarily, and historically, * * * matter[s] of local concern,' the 'States traditionally have had great latitude under their police powers to legislate as to the protection of the * * * health * * * of all persons.'") (internal citations omitted) (cited in *Exxon Mobil Corp.* v. *U.S. Envtl, Prot. Agency,* 217 F.3d 1246, 1255 (9th Cir.2000)).

The Court therefore concludes that the Fleet Rules do not constitute unlawful standards "relating to the control of emissions."

B. Section 177

Plaintiffs argue that the Fleet Rules violate CAA § 177, which provides:

> Notwithstanding section 7543(a) of this title, any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 7543(a) of this title respecting such vehicles if ¶(1) such standards are identical to the California standards for which a waiver has been granted for such model year, and
>
> (2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator).
>
> Nothing in this section or in subchapter II of this chapter shall be construed as authorizing any such State to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a "third vehicle") or otherwise create such a "third vehicle."

42 U.S.C. § 7507.

As discussed earlier, CAA § 177 permits states other than California to "piggyback" onto California's standards if the state's standards are identical to California standards for which a waiver has been granted for a model year. Section 177, however, applies only to non-California "opt-in" states. The statutory language supports this conclusion. After first referring to states that adopt the California standards, section 177 declares that "any such state" is subject to certain limitations. The word "such" indicates that the statute is

referring back to the non-California "opt-in" states. Section 177 has no application to the right of the District to regulate the purchase of fleet vehicles.

Furthermore, Congress' purpose in enacting § 177 is to prevent states from adopting and enforcing standards in a manner that would create a "third vehicle." *See Motor Vehicle Mfrs. Ass'n*, 17 F.3d at 528. Evident in the statutory scheme is Congress' desire not to burden manufacturers with "myriad state emission regulations." *Id.* at 531. Congress restricted states to duplicating either federal or California standards in order "to protect motor vehicle manufacturers from the undue burden of complying with more than two different regulatory schemes." *Am. Auto. Mfrs. Ass'n* v. *Comm'r*, 998 F.Supp. 10, 13 (D. Mass.1997) (quoting *Motor Vehicle Mfrs. Ass'n*, 810 F.Supp. at 1339).

> [Section 177] prevents opt-in states from imposing different emission requirements on new vehicles and engines that would place an undue burden on manufacturers by requiring them to produce materially different new vehicles for sale in such areas. To the extent that a manufacturer could demonstrate that each vehicle leaving the assembly line performs at levels to which it was certified, that manufacturers could claim 'undue burden' if a state that adopted the California standard applied enforcement procedures that would require materials [sic].changes in the manufacture of such vehicles, i.e., production of a third car.

Senate Comm. on Pub. Works, 103d Cong., 1st Sess., *A Legislative History of the Clean Air Act Amendments of 1990*, Serial No. 103-38, Vol. 1 at 1022. Therefore, "there can only be two types of cars in this country: 'California' cars or 'federal' cars'. States cannot adopt any other standards which would require automakers to create a 'third' car." *Commissioner*, 998 F. Supp. at 13.

The Fleet Rules impose no such "third car" requirement. Rather, they require purchasers to choose from among a subset of previously certified vehicles. Automobile manufacturers will not be forced to do something more than they already must do. Restricting purchases to the types of engines already approved in California and for which a waiver has been granted will not violate § 177's "third vehicle" prohibition. Section 177 bans any requirement for a third vehicle, not all requirements intended to reduce motor vehicle emissions. The CAA and its legislative history show that Congress limited the burden upon manufacturers to that of designing and manufacturing two versions of each motor vehicle, and no more. The Fleet Rules may lead to decreased demand for some cars and trucks certified for sale in California, but the Rules do not require the manufacturers to build or sell any particular model for this area. The Court concludes, therefore, that even if § 177 were to apply, the Fleet Rules do not run afoul of Congress' purpose in enacting § 177.

III. CONCLUSION

The Court concludes that the Fleet Rules are not preempted by § 209(a) of the Clean Air Act and are a valid exercise of the SCAQMD's authority. Section 177 does not apply to the District's Fleet Rules. Plaintiffs' Motions for Summary Judgment as to counts one through six of their Complaints are denied. Defendants' Motions for Summary Judgment are granted.

IT IS SO ORDERED.

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 01-56688
(D.C. No. CV-00-09065-FMC)

ENGINE MANUFACTURERS ASSOCIATION, *et al.*,
Plaintiffs-Appellants,

v.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, *et al.*,
Defendants-Appellees.

Filed December 11, 2002

ORDER

Before: GOODWIN, RYMER, and McKEOWN, Circuit Judges.

The panel has voted unanimously to deny the petition for rehearing. Judges Rymer and McKeown have voted to deny the petition for rehearing *en banc*, and Judge Goodwin recommended denial.

The full court has been advised of the petition for rehearing *en banc* and no active judge has requested a vote on whether to rehear the matter *en banc*. Fed.R.App.P.35.

The petition for rehearing is DENIED and the petition for rehearing *en banc* is DENIED.

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 02-16395
(D.C. No. CV-F-02-5017 REC/SMS)

CENTRAL VALLEY CHRYSLER-PLYMOUTH, INC., *et al.*,
Plaintiffs-Appellees,

v.

MICHAEL P. KENNY,
Defendant-Appellant.

EXCERPT OF BRIEF OF THE UNITED STATES AS *AMICUS CURIAE* IN SUPPORT OF AFFIRMANCE

INTEREST OF THE *AMICUS CURIAE*

As part of the Energy Policy and Conservation Act, Congress has mandated federal fuel economy standards. In so doing, Congress also expressly preempted any state laws or regulations relating to fuel economy standards. The United States has a substantial interest in enforcing the federal fuel economy standards and in ensuring that states adhere to the Congressional directive prohibiting them from "adopt[ing] or enforce[ing]" any "law or regulation related to fuel economy standards or average fuel economy standards for automobiles." 49 U.S.C. § 32919(a).

STATEMENT OF THE ISSUE

Whether the provisions of the California's Zero Vehicle Emission regulations granting credits for hybrid vehicle, if they meet specified criteria, are preempted under 49 U.S.C. § 32919(a), because the criteria are defined in reference to fuel economy standards.

STATEMENT OF THE CASE

1. Federal Fuel Economy Standards.

a. In the aftermath of the 1973-1974 Arab oil embargo, Congress in 1975 enacted the Energy Policy and Conservation Act ("EPCN"). The EPCA was intended to conserve energy, to increase the supply of fossil fuels in the United States, and to reduce American dependence on foreign oil. *See* S. Rep. No. 516, 94th Cong., 1st Sess. 116, reprinted in 1975 U.S. Code Cong. & Ad. News 1956, 1957.

Title III of the EPCA added a new Title V to the Motor Vehicle Information and Cost Savings Act, introducing a program of mandatory fuel economy standards for passenger cars and light trucks to be implemented by the Department of Transportation. *See* P.L. 94-163, 89 Stat. 901, codified as amended at 49 U.S.C. § 32901, *et seq*. For model year 1985, Congress set a 27.5 miles per gallon ("mpg") fuel economy standard, a figure that would represent an approximate doubling of then-existing average passenger car fuel economy. 49 U.S.C. § 32902(b). Congress authorized the agency to modify the 27.5 mpg standard for a particular model year to the level which it determines is the "maximum feasible average fuel economy level" for that year. 49 U.S.C. § 32902(a). The statute sets out four criteria for the agency to apply in determining maximum feasible average fuel economy standards. 49 U.S.C. § 32902(f). The agency must consider (1) technological feasibility; (2) economic practica-

bility, (3) the effect of other motor vehicle standards on fuel economy, and (4) the need of the Nation to conserve energy. *Ibid.*

The Act does not require that every vehicle, or every model, meet the fuel economy standard for a given model year. The Act requires instead that the average fuel economy level of all of a manufacturer's passenger cars and light trucks meet the applicable standard. Thus, the fuel economy standard which a manufacturer is required to meet for a given model year is known as the Corporate Average Fuel Economy or "CAFE" standard, and the level which the manufacturer actually achieves in a given model year is known as the CAFE level. 49 U. S.C. § 32902; *see, e.g.* 67 Fed. Reg. 16052 (2002) (establishing the light truck CAFE level for model year 2004).

Federal law defines an "automobile" as a "four-wheeled vehicle that is propelled by fuel, or by alternative fuel, manufactured primarily for use on public streets, roads, and highways," with a gross vehicle weight rating up to 10,000 pounds. See 49 U.S.C. § 32901(a)(3). *See also* 49 C.F.R. § 523.3 (defining "automobile" under the CAFE program). Furthermore, 49 U.S.C. § 32901(a)(3) defines "alternative fuel" to include "electricity." An "alternative fueled automobile" means an automobile that either has a single "dedicated" fuel type (such as natural gas or electricity) or is "dual fueled," meaning that it uses regular fuels such as gasoline as well as an alternative fuel. *Id.* at §§ 32901(a)(2)(A) and 32901(a)(2)(B).

Federal law specifically addresses the manner in which cars running on "alternative fuel" are to be factored into a manufacturer's CAFE rating, requiring that the CAFE calculation include all vehicles, including electric vehicles and should include the "equivalent petroleum based fuel economy values

determined by the Secretary of Energy for various classes of electric vehicles." 49 U.S.C. § 32904(a)(2)(B).

b. In enacting the federal CAFE standards, Congress explicitly and broadly preempted all state laws relating to fuel economy standards:

> [w]hen an average fuel economy standard prescribed under this chapter is in effect, a State or a political subdivision of a State may not adopt or enforce a law or regulation related to fuel economy standards or average fuel economy standards for automobiles covered by an average fuel economy standard under this chapter.

49 U.S.C. § 32919(a).

2. The Clean Air Act.

The Clean Air Act ("CAA") also contains a preemption provision. It provides that "no State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines." 42 U.S.C. § 7543(a). The CAA, however, permits California to adopt standards for the control of emissions from new motor vehicles that are in the aggregate at least as protective of public health and welfare as federal standards. See 42 U.S.C. § 7543(b). The Administrator of EPA must waive preemption under the Clean Air Act for those state standards, unless the Administrator makes specified findings regarding protectiveness, necessity, and consistency with certain Clean Air Act provisions. *Ibid.*

3. California's ZEV Program.

The California Air Resources Board first adopted the Zero Emissions Vehicle ("ZEV") program in 1990 as part of its efforts to regulate exhaust emissions from automobiles. 2001-19 Cal. Reg. L. Bull. 204. *See* 13 Cal. Code Regs.

§ 1962. The regulations originally required large automakers to produce vehicles as a specified percentage of their fleet that produce no exhaust emissions of criteria pollutants or their precursors. Excerpts of Record ("ER") 364. In the face of questions regarding the feasibility of these goals, the Board repeatedly amended the ZEV regulations, ultimately issuing in 2001 the final rule at issue in this litigation. *See* 13 Cal. Code Regs. § 1962.

The rule at issue requires that for model years 2003 through 2008, at least 10% of the passenger cars and light-duty trucks produced by a manufacturer and delivered for sale in California must be ZEVs. 13 Cal. Code Regs. § 1962(b)(1)(A); ER 367. After that date, the percentage rises incrementally to 16% for 2018 and subsequent model years. 13 Cal. Code Regs. § 1962(b)(1)(A); ER 367.

The regulations contemplate that it would be too costly for manufacturers to meet these standards solely by the production of pure Zero Emission Vehicles. ER 362-363. Accordingly, the regulations allow manufacturers to accrue "ZEV credits" through the production of "Partial Zero Emission Vehicles" or "PZEVs," and "advanced technology" PZEVs. *See* 13 Cal. Code Regs. § 1962(c). Automobiles can qualify for an allowance as advanced technology PZEVs "if the manufacturer demonstrates to the reasonable satisfaction of the [State] Executive Officer that the vehicle is equipped with advanced ZEV componentry such as an advanced battery integral to the operation of the vehicle power train or an electric power train." *See* 13 Cal. Code Regs. § 1962(c)(4)(B).

Gasoline-electric hybrid vehicles can qualify as advanced technology PZEVs—and hence qualify for ZEV credits—but only if they meet one of the alternative standards prescribed in the regulations. *See* 13 Cal. Code Regs. § 1962(c)(4)(B); ER 403. These include the "Efficiency Method" and the

"Carbon Dioxide (CO_2) Reduction Method." 13 Cal. Code Regs. § 1962(c)(4)(B)(1) and (2).

a. The Efficiency Method.

For a hybrid vehicle to qualify for credits under the "Efficiency Method," the vehicle must achieve a certain level of efficiency as measured by its federal fuel economy rating as compared with the class average. See 13 Cal. Code Regs. § 1962(c)(4)(B)(2); ER 403. As provided under the Efficiency Method, a vehicle's "Advanced Componentry Allowance" is measured through a formula under which its "California Miles Per Equivalent Gallon" is divided by a function of its "Baseline Fuel Economy."' 13 Cal. Code Regs. § 1962(c)(4)(B)(2).

* * *

4. Proceedings Below.

Plaintiffs—General Motors Corporation, Daimler-Chrysler Corporation, and several California automobile dealers—sought to enjoin enforcement of the 2001 regulations, arguing that the regulations fall within the broad preemption of the EPCA. ER 1-15. California argued that its rule permissibly regulates emissions and that the provisions relating to fuel economy standards merely represented some of the options by which manufacturers could comply with the regulatory standards.

Plaintiffs filed a motion for a preliminary injunction. ER 163-165. After a hearing and extensive briefing, the court granted plaintiffs' motion. ER 1052-1067. The court found that plaintiffs had demonstrated a "strong likelihood of success on the merits of their claim that the AT PZEV option set forth in the 2001 ZEV amendments is completely preempted by [49 U.S.C. § 32919(a)] * * * and that plaintiffs will suffer irreparable injury if the requested preliminary

injunction is not granted because of the very substantial costs of compliance with the 2001 ZEV Amendments." ER 1066.

In holding that plaintiffs were likely to prevail on their preemption claim, the court explained, "[p]laintiffs have shown that the 2001 ZEV amendments 'relate to' fuel economy standards because they clearly have the purpose of regulating the fuel economy performance of * * * advanced technology hybrids * * * [that plaintiffs] predict [ ] the industry will sell in California." ER 1056-1057. The court noted that the specific state regulations incorporate federal fuel economy test procedures, and that qualifying vehicles are credited based upon their fuel consumption as measured using the federal procedure. ER 1057. The court found that the state regulations have the practical effect of regulating fuel economy based on California's calculation of the expected number of hybrids that would use the advanced technology provision to earn additional credits. The court rejected the State's argument that the preemption provision should not apply because the State's requirements are focused on the reduction of emissions, and do not conflict with the objectives of the CAFE provisions. The court explained, "[p]reemption cannot be avoided by intertwining preempted requirements with nonpreempted requirements." ER 1059. The court also rejected the State's contention that the availability of other options for obtaining ZEV credits saved from preemption the options linked to fuel economy. ER 1060-1061. The court found that options linked to fuel economy would be the lowest cost options available and that the other options did not in fact offer a "viable alternative." ER 1061.

The court then determined that the automakers would suffer irreparable injury from enforcement of the 2001 ZEV rules. The court found that the automakers had shown that would have to spend hundreds of millions of dollars to comply with the 2001 ZEV regulations (accord Cal. Br. 19),

and that those investments could not be recovered from California due to sovereign immunity. ER 1065.

SUMMARY OF ARGUMENT

A. In the Energy Policy and Conservation Act, Congress expressly preempted all state laws or regulations "related to fuel economy standards or average fuel economy standards for automobiles covered by an average fuel economy standard under this chapter." 49 U.S.C. § 32919(a). The phrase "related to" used in a preemption statute "express[es] a broad preemptive purpose," *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992), and, here, preempts any state statute or regulation "if it has a connection with or reference to" fuel economy standards. *Egelhoff* v. *Egelhoff ex rel. Breiner*, 532 U.S. 141, 147 (2001).

Under the "connection with or reference to" standard embraced by the Supreme Court, the California regulations at issue here clearly are preempted. Specifically, the regulations' "Efficiency Method," "CO_2 Reduction Method," and "High-Efficiency Allowance" all refer to fuel economy ratings and provide credits or allowances based on the level of a vehicle's fuel economy rating. For example, a threshold fuel economy level must be met to qualify for credits under the "CO_2 Reduction Method." Then, once that threshold level is met, the number of credits earned depends upon the vehicle's fuel economy rating: the better the fuel economy ratings, the greater the ZEV credits.

Because these California regulations directly refer to fuel economy levels, and because manufacturer credits are based on the level of a vehicle's fuel economy rating, they are preempted under the plain terms of section 32919(a).

B. The State argues that these standards are not preempted because manufacturers may also meet ZEV requirements

through various alternative means. The Supreme Court, however, has rejected the notion that a state's provision of options or even the ability to freely opt out of the state law provision saves the state law from the effects of an express federal preemption statute. *See Egelhoff* v. *Egelhoff ex rel. Breiner, supra*.

The primary case relied upon by the State, *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151 (1978), is not to the contrary. *Ray* did not involve an express preemption provision, such as the one here, addressing a particular subject that Congress has determined may not be the subject of state regulation.

* * *

ARGUMENT

THE CALIFORNIA 2001 ZEV REGULATIONS ARE PREEMPTED UNDER 49 U.S.C. § 32919(a).

A. Article VI of the United States Constitution commands that the laws of the United States "shall be the supreme Law of the Land; * * * any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Art. VI, cl. 2. *See also McCulloch* v. *Maryland*, 4 Wheat. 316, 427 (1819) ("It is of the very essence of supremacy, to remove all obstacles to its action within its own sphere, and so to modify every power vested in subordinate governments"). Thus, "[a] fundamental principle of the Constitution is that Congress has the power to preempt state law." *Crosby* v. *National Foreign Trade Council*, 530 U.S. 363, 372 (2000). *See also Gibbons* v. *Ogden*, 9 Wheat. 1, 211 (1824). "State law may be preempted "by express language in a congressional enactment, * * * by implication from the depth and breadth of a congressional scheme that occupies the legislative field, * * * or by implication because of a conflict with a

congressional enactment." *Lorillard Tobacco Co.* v. *Reilly*, 533 U.S. 525, 540 (2001).

In the present case, state law has been preempted by express language in a congressional enactment. The Energy Policy and Conservation Act provides that when a federal fuel economy standard is in effect "a State or a political subdivision of a State may not adopt or enforce a law or regulation related to fuel economy standards or average fuel economy standards for automobiles covered by an average fuel economy standard under this chapter." 49 U.S.C. § 32919(a).

The phrase "related to" in the statute is broad on its face, and as the Supreme Court has held in interpreting similar language in other preemption statutes, "express[es] a broad preemptive purpose." *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992) (interpreting the preemption provision of the Airline Deregulation Act, 49 U.S.C. § 41713); *see also American Airlines, Inc.* v. *Wolens*, 513 U.S. 219 (1995). In *Morales*, the statute at issue expressly preempted the States from "enact[ing] or enforc[ing] any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or services of any air carrier." *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. at 383. The Court recognized that the "ordinary meaning" of the key phrase "relating to" " is a broad one—'to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with,' Black's Law Dictionary 1158 (5th ed. 1979)—and the words thus express a broad preemptive purpose." *Ibid.*

In another context where Congress used similar language—29 U.S.C. § 1144(a)—preempting all state laws "related to" an ERISA plan—the Supreme Court has addressed the phrase many times and has "observed repeatedly that this broadly worded" language is "clearly expansive."

Egelhoff v. *Egelhoff ex rel. Breiner*, 532 U.S. 141, 146 (2001). *See also Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 96-97 (1983) (the "breadth of [the ERISA provision's] preemptive reach is apparent from [its] language"); *Metropolitan Life Ins. Co.* v. *Massachusetts*, 471 U.S. 724, 739 (1985) (the "related to" language has a "broad scope"); *Pilot Life Ins. Co.* v. *Dedeaux*, 481 U.S. 41, 46-47, 107 S. Ct. 1549, 1552-1553, 95 L. Ed. 2d 39 (1987) (the language has an "expansive sweep," and must be read as "deliberately expansive"); *Ingersoll-Rand Co.* v. *McClendon*, 498 U.S. 133, 138 (1990) (the preemption statute is "broadly worded"); *FMC Corp.* v. *Holliday*, 498 U.S. 529 58 (1990) (the statute is "conspicuous for its breadth").

In the other contexts where Congress has employed the "related to" language in a preemption provision, the Court has explained that a state statute is preempted "if it has a connection with or *reference to such a plan*." *Egelhoff*, 532 U.S. at 147 *(quoting Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. at 97) (emphasis added). *See also Morales* v. *TWA*, 504 U.S. at 384 (adopting the same standard for the Airline Deregulation Act preemption provision).

Whatever the outer limits of this expansive "related to" language may be, they need not be decided in this case, however, because the preemption provision of the Energy Policy and Conservation Act clearly encompasses the California regulations at issue here. Under the "connection with or reference to" standard embraced by the Supreme Court, there can be no question that the California regulations at issue here are subject to preemption because they expressly speak in "reference to" fuel economy ratings, with regulatory credits for vehicle manufacturers based on the level of the fuel economy rating.

This is most evidently the case with the "Efficiency Method," which allows manufacturers to qualify for ZEV

credits by producing hybrid vehicles with a federal fuel economy rating at least 30% better than a standard level set by the regulations. *See* 13 Cal. Code Regs. § 1962(c)(4)(B)(2); ER 64-65. The regulations provide regulatory credits for the vehicle manufacturer based solely on comparing the vehicle's fuel economy ratings, measured using the federal test procedure, to a specified class average fuel economy.

* * *

At bottom, the State asks this Court to ignore the statutory language and to deduce whether Congress would have wanted to preempt regulations that establish fuel economy standards for vehicle manufacturers, because they are a part of a regulatory program addressing emissions. As the Supreme Court has recently observed, however, such "[a] freewheeling judicial inquiry into whether [state law] is in tension with federal objectives would undercut the principle that it is Congress [and federal agencies,] rather than the courts[,] that pre-emp[t] state law." *Geier* v. *American Honda Motor Co.*, 529 U.S. at 906 (brackets in original) (quoting *Gade* v. *National Solid Wastes Management Assn.*, 505 U.S. at 111 (Kennedy, J., concurring)). In any event, the "the plain language of the enacted text is the best indicator of [congressional] intent." *Nixon* v. *United States*, 506 U.S. 224, 231 (1993). Thus, when construing a preemption statute, a court must "begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. at 383 (*quoting FMC Corp.* v. *Holliday*, 498 U.S. at 56-57). The plain language of section 32919(a) clearly encompasses the regulations at issue in this case. Accordingly, further inquiry into whether Congress would have wanted to preempt the regulations at issue here would be both unnecessary and inappropriate.

Even if California's intent is to regulate emissions, it cannot escape the effect of the EPCA preemption provision. The preemption provision contains no exceptions based on the purpose or purposes of a state's fuel economy regulation. When state regulations by their terms make compliance by the vehicle manufacturer dependent in whole or in part on a vehicle's fuel economy, as these regulations do, the terms and purpose of the preemption provision are implicated directly.

CONCLUSION

For the reasons stated above, the judgment of the district court should be affirmed.

Respectfully Submitted,

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